

INTERNAL COMPLAINT COMMITTEE

Guru Gobind Singh Indraprastha University,

The Sexual Harassment of Women at Workplace
(Prevention, Prohibition and Redressal) Act, 2013
(“POSH Act”)





GENESIS OF THE LAW

- Safe workplace and educational institution campus a legal right, and sexual harassment at the workplace is a gross violation of it.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) finds its genesis in constitutional mandates.
- This interpretation of the constitutional framework was done by the Supreme Court in the case of Vishaka vs. State of Rajasthan, through which the historical Vishaka Guidelines came into being.



GENESIS OF THE LAW

- These guidelines later formed the roots and basis for the POSH Act,
- University Grants Commission(Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions)Regulations, 2015
- employees and students to be completely aware of their rights, duties and the redressal mechanisms under the POSH Act, and the UGC Regulations



DEFINITIONS

- **Aggrieved woman-** Any woman subjected to any act of sexual harassment by employee of an organisation, or the employer. The woman may or may not be employed in that particular organisation to seek redressal.
- **Campus-** Anything and everything that is on the land of the Higher Education Institution (HEI).
- **Executive Authority-** in which the general administration of the HEI is vested. For public funded institutions the Executive Authority means the Disciplinary Authority.

DEFINITIONS

- **Higher Educational Institution** - Any University, College or an Institution deemed to be a University, recognised under the University Grants Commission Act, 1956 is a HEI.
- **Local Committee (LCC/LC)** - Every district officer is bound to constitute in district concerned to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted.
- **Respondent**” is a legal term generally used for a person against whom the complaint has been made by the aggrieved woman.

DEFINITIONS

The term “**student**” covers -

- Current, Future or Deemed student - any student who is a participant in any activities in an HEI other than HEI where the student is enrolled.
- **Third Party Harassment-** A situation where sexual harassment occurs as a result of an act or omission by any third party or outsider who is not an employee or student of HEI but a visitor in some other capacity or for some other purpose.

DEFINITIONS

Sexual Harassment

- An implied or explicit promise of preferential/ detrimental treatment in the employment;
- An An implied or explicit threat about present or future employment status;
- Interference with work or creating an intimidating or hostile environment
- Physical contact and advances
- A demand or request for sexual favours
- sexually coloured remarks; pornography;
- Unwelcome physical, verbal or non-verbal conduct of sexual nature;

DEFINITIONS

Employee

means a person employed by HEI/Company for any work and includes:-

- Regular, temporary, ad hoc or daily wage basis;
- Either directly or through an agent, with or without the knowledge of the principal employer ;
- Whether for remuneration or not or working on a voluntary basis or otherwise;
- a contract worker, probationer, apprentice or called by any other such name .

DEFINITIONS

Workplace includes:-

- All premises including Corporate Office, head office, branch offices and all other premises, locations, establishments, institutions, units, sites controlled directly or indirectly
- All other premises where employees of the HEI/ Company visit during the course of their employment including official events; and
- Includes the transportation and accommodation, provided by the HEI/ Company for employees during the course of employment for commutation or residence purposes.

DEFINITIONS

Workplace in HEI means the campus including any department, establishment, office etc funded by the HEI, or any sports institute, stadium etc used for activities. It also includes any place visited by an employee or student during the course of their employment or study including transportation provided by the Executive Authority. Any places visited by a person as a student of the HEI, including the transportation provided for the purpose of their commute to and from the institution is also covered under the scope of “campus”.



Obligations of Employer

- Promote a **gender sensitivity at workplace.**
- Provide a **safe working environment.**
- Formulate and widely disseminate an **internal policy** easily accessible and periodically updated.
- **Display conspicuously** at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment.
- **Declare the names and contact details** of all the members of the Internal Committee.
- Sexual harassment is a misconduct under service rules.
- Conduct regular workshops and trainings to raise awareness against sexual harassment at workplace

Internal Complaint Committee


- Receive complaints from aggrieved woman.
- Inquire into the complaint.
- Recommendations to the employer on the action.
- Every Executive Authority in HEI shall constitute an ICC with an inbuilt mechanism for gender sensitization against sexual harassment. All the members are to be nominated by the Executive Authority.


COMPOSITION

- Presiding Officer: A woman faculty member employed at a senior level (not below a Professor /Associate Professor)
- Employee Members: Two faculty members and two non-teaching employees,
- External Member: One member from amongst NGO/Association.
- 3 students undergraduate, master's, and research scholar
- Persons in senior Administrative positions shall not be members.

NATURE OF ICC

- The ICC is empowered to make recommendations to the employer post the inquiry and has similar powers as vested in a civil court under Code of Civil Procedure 1908 when trying a suit.
- 50% members of the ICC must be women. - should not hold office for more than 3 years
- In this context, ICC can make various recommendations that are in the form of civil remedies, disciplinary action and compensation.

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- HEI to make all sections of the institutional community aware of the contact details of members of Internal Complaints Committee, as well as the complaints procedure.
 - The Complaints Committee will conduct an inquiry by calling all the concerned parties i.e. complainant, respondent, witnesses etc. Minimum of 3 ICC members including Presiding Officer/Chairperson must be present while conducting inquiry.

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- An aggrieved person is required to submit a written complaint to the ICC within three months from the date of the incident. In case a series of incidents have happened, a person may file the complaint before the ICC within a period of three months from the date of the last incident.
 - A written complaint -it is the responsibility of the ICC to provide her all the assistance that is needed for her to submit the complaint in written form.



Procedure in brief

The aggrieved woman may make the complaint i-
within the period of three months- file six copies
If **physical incapacity**, any of following may file a
complaint:

- Her relative or friend;
- Her co-worker;
- An office of the National Commission for Women or State Women's Commissions;
- Any person who has knowledge of the incident, with the written consent of the aggrieved woman;

PROCEDURE OF ENQUIRY

- The complainant shall submit 6 copies of the complaint , supporting documents, names and addresses of witnesses.
- The ICC shall send one copy of the complaint to the respondent within a period of seven working days
- Respondent shall file their reply with the list of documents, and names and addresses of witnesses within a period of ten working days.
- NO legal representation at any stage

PROCEDURE OF ENQUIRY

CONCILIATION –

- The ICC may, before initiating an inquiry, at the request of the Aggrieved Woman, take steps to settle the matter between her and the Respondent.
- No monetary settlement shall be made as a basis of conciliation.
- The settlement terms shall be recorded in writing and forwarded to the Board of Directors of the Company. Copies of the same shall be provided to the Aggrieved Woman and the Respondent.
- Where a settlement has been arrived at, no further inquiry shall be conducted by the ICC.

Procedure of Enquiry

ENQUIRY–

- In case, conciliation is not possible, ICC shall investigate the complaint and provide its report, as promptly as possible, but not later than 90 working days from the date of the Complaint.
- The ICC shall follow principles of natural justice .
- Complete confidentiality shall be maintained.
- A copy of the Complaint shall be given to the Respondent as well as the Complainant.
- The Respondent shall submit his response to the Complaint as well as to indicate whether the Respondent wishes the ICC to examine any witnesses or furnish any evidence.

Procedure of Enquiry

- The Complainant shall also indicate in writing whether the Complainant wishes the ICC to examine any witnesses or furnish any additional evidence.
- Upon receipt of the responses from the Respondent and the Complainant, the ICC shall conduct a hearing in person.
- ICC shall be empowered to call upon such of the Employees who may have been witness to the incident(s) of Sexual Harassment and/or connected in any manner thereto.
- All Employees shall extend their fullest co-operation to ICC.
- Upon completion of the hearing, the ICC shall prepare its complete report, setting out its recommendations on the disciplinary action(s) to be taken against the Respondent or Complainant (as the case may be).


NATURE OF AWARD


- Offence committed and the action taken can be mentioned in the offender's permanent records.
- Award reformatory punishments like undergoing mandatory counselling or performance of community services.

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- **Compensatory recommendation:** ICC can make recommendations and HEI shall issue directions to the offender for the payment of such compensation as recommended by the ICC, and agreed upon by the Executive Authority.

The compensation based on the following parameters

- - Mental trauma, pain, suffering and distress caused to the aggrieved person:

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- The loss of career opportunity - did not get promoted, did not get confirmed , did not graduate on time,
 - The medical expenses incurred by the victim for physical, psychiatric treatment:
 - The income and status of the alleged perpetrator and victim: Respondent's ability to pay is an important factor while deciding compensation. The ICC/LCC can only recommend what the respondent can pay



Punishment

The punishment prescribed in the POSH act are as follows:

- Punishment prescribed under the service rules of the organization.
- Punishment like withholding of promotion, increments, etc. The committee can also decide to terminate the employment.
- Punishment could also be deduction of compensation payable to the aggrieved woman from the wages of the respondent.
- In case if the false or malicious complaint is filed, the Committee can take disciplinary action against them.


Punishment for Sexual Harassment

- ▶ To take action for sexual harassment as an act of misconduct in accordance with the rules/regulations of the Company governing 'conduct and discipline' as applicable to the Respondent; **and/or**
- ▶ To deduct such amounts from the salary or wages of the Respondent as may be considered appropriate to be paid to the Complainant as per the Policy of the Company.
- ▶ Section 354, 354 A, 354B, 354 C, 354 D and 509 of Indian Penal Code, 1860 provides for punishment for offences of outraging the modesty of woman, sexual harassment, disrobe, voyeurism, stalking and insulting the modesty of woman respectively and the punishment ranges between rigorous imprisonment from 1 to 3 years AND fine or both.

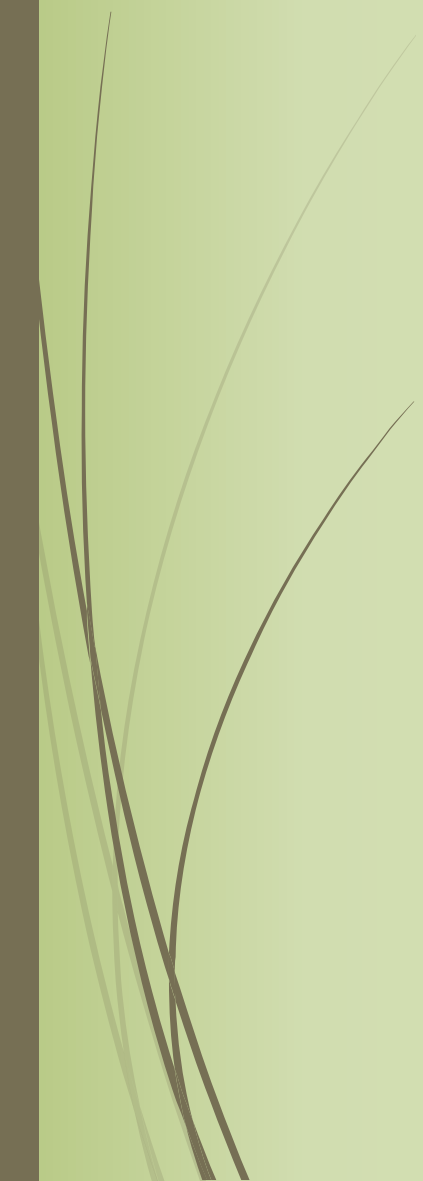
Punishment for Malicious Complaint or False Evidence

If an Employee is found to have raised a malicious or false Complaint or given any false evidence, such complainant or such person making evidence may also be subject to :-

- ▶ Appropriate disciplinary action, which may include termination of employment, engagement or relationship with the Company, as the case may be.



Absence of complaints of sexual harassment does not necessarily mean absence of sexual harassment.....



For any questions/
queries on this
you can reach us
at



Thank You

Kanwal D Singh

Chairperson ICC